

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
REPLY BRIEF**



74-1472

To be argued by

STEPHEN C. VLADECK

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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JAMES D. HODGSON, Secretary of Labor,  
United States Department of Labor,

Plaintiff-Appellee,

-and-

ANGEL ROMAN,

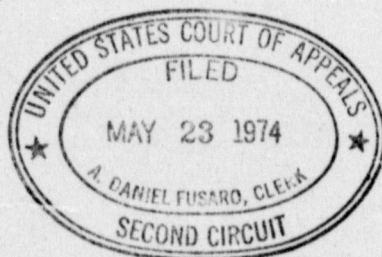
Intervenor-Respondent,

-against-

INTERNATIONAL UNION OF ELECTRICAL, RADIO  
AND MACHINE WORKERS, AFL-CIO, AMALGAMATED  
MACHINE, INSTRUMENT AND METAL LOCAL 485,

Defendant-Appellant.  
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REPLY BRIEF



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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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JAMES D. HODGSON, Secretary of Labor,  
United States Department of Labor, :

Plaintiff-Appellee, :

-and- :

ANGEL ROMAN, :

Intervenor-Respondent, :

-against- :

INTERNATIONAL UNION OF ELECTRICAL,  
RADIO AND MACHINE WORKERS, AFL-CIO, :  
AMALGAMATED MACHINE, INSTRUMENT AND  
METAL LOCAL 485, :

Defendant-Appellant.

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REPLY BRIEF

Preliminary Statement

This Reply Brief is submitted on behalf of  
defendant-appellant, International Union of Electrical,  
Radio and Machine Workers, AFL-CIO, Amalgamated Machine,  
Instrument and Metal Local 485 (hereinafter "Local 485")  
and in response to the Brief of plaintiff-appellee,  
Peter J. Brennan, Secretary of Labor, substituted for  
James D. Hodgson, pursuant to F.R.A.P. Rule 43(c).

## POINT I.

THERE WAS NO TIMELY CHALLENGE  
TO HAMILTON ARCHER'S APPOINT-  
MENT AS LOCAL 485 BUSINESS  
MANAGER, PRECLUDING A COLLATERAL  
ATTACK UPON IT AT HIS SUBSEQUENT  
GENERAL ELECTION.

The decision of the Court below results in the sanctioning of a clearly improper collateral attack by the Secretary of Labor upon the "appointment" of Hamilton Archer as Business Manager of Local 485 in September 1969. A vacancy existed in that office and, as will be shown infra, in Point II, the Local Union clearly had the right to fill that vacancy in accordance with its construction of its own law. Since the next membership meeting was to be held in February 1970, by temporary election by the Executive Board, Archer was designated to fill the vacancy until the next regular meeting. His initial nomination in September 1969 had to be and was subsequently ratified by a vote of the Local Executive Board on October 18, 1969.

The Executive Board is not a tightly knit arm of authority of the officers but rather a representative group of 75 members of the Union (F-32)\*

This election process was an entirely reasonable construction of the Union's law to fill a long unfilled vacancy in the office before the next General Membership meeting, which was still over four months away, at which time an election could be conducted.

The Secretary's action in seeking to invalidate the general election held on February 24, 1970, was impermissible in that it sought to remedy a purported "wrong" where no wrong was thought to exist by the members of the Local Union.

In the four month period between the date of Archer's interim election as Business Manager and his subsequent election to that office at the General Membership meeting in February 1970, not one challenge to his original ascension to office was made by Local 485 to the Union nor was any complaint filed with the Secretary of Labor (F-34). His election to that office by the Executive Board was well

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\*Reference to "F" is to the Findings of Fact and Order for Judgment

publicized. The membership was apprised of what had occurred through Newsletters and notices. Yet, it is uncontroverted that no timely challenge was made by any member in any forum. Since no union member sought to challenge the interim designation of Archer and no timely complaint concerning it was received by the Secretary of Labor, the Secretary was wholly without power to challenge that election and to collaterally attack it on the assumption that it "tainted" the subsequent general election of Archer in February 1970.

POINT II.

THE APPOINTMENT AND RATIFICATION  
METHOD USED TO FILL THE VACANCY  
OF BUSINESS MANAGER IN SEPTEMBER  
AND OCTOBER 1969 WAS NOT UNREASON-  
ABLE, ARBITRARY OR CAPRICIOUS.

A reading of the Local Union's Constitution yields no definitive section which deals with the filling of a vacancy in an office between regularly scheduled membership meetings of the Local Union.

"The Constitution contains no provisions other than Article XI, Section 10, for filling offices that fall vacant between regular biennial elections, and it appears to contain no provision literally dealing with the filling of an office intentionally left vacant at a regular biennial election."  
(F-17)

That provision in pertinent part reads:

"In the event a vacancy occurs in any office or elected position, the vacancy for the unexpired term shall be filled by nomination and election at the next regular meeting of the Local."

A similar situation, identical in fact to the one before the Court here, resulted in a vacancy being filled by the nomination of the President of the Local, ratified by a vote of the Executive Board. It is undisputed that this had occurred in the cases of Mr. Archer's two immediate predecessors, Cameron and Eisenberg (F-8). It is respectfully submitted that it is neither the function of the courts nor of the Secretary of Labor to intervene in those instances where a union in good faith construes its own law and that construction is not arbitrary, discriminatory or unreasonable.

The analogy of the power of the Secretary under Title IV to that of the Court's under Title I warrants such a conclusion. Certainly, if the courts are constrained from interference with reasonable and legitimate constructions of internal union law, the Secretary of Labor should be required to exercise equally reasonable discretion.

As the Supreme Court said:

"We find nothing either in the language of the legislative history of Section 101 (a)(5) that can justify a substitution of judicial for union authority to interpret the union's regulations in order to determine the scope of offenses warranting discipline of union officers."

Boilermakers v. Hardeman, 401 233, 242, 243 (1971) reh. den. 402 U.S. 967.

This Court stated it more succinctly in Gurton v. Arons, 339 F. 2d 371 (2d Cir., 1964):

"The provisions of LMRDA were not intended by Congress to constitute an invitation to the courts to intervene at will in the internal affairs of unions. The courts have no special expertise in the operation of unions which would justify a broad power to interfere. The internal operations of unions are to be left to the officials chosen by the members to manage those operations, except in the very limited instances expressly provided by the Act . . . General supervision of unions by the courts would not contribute to the betterment of the unions or their members

or to the cause of labor management relations." (p.375)

The Court added:

"So long as the union in reaching its decision violates no provision of law, the judges should resolutely keep our hands off." (p.375)

No provisions of law were violated by the interim election of Archer. On the contrary, the by-laws of the Union were interpreted to permit such "election" and it drew no complaint until after the general election in this case and no complaint whatever when used in the two prior similar instances of Cameron and Eisenberg. The practice had clearly been accepted by the members of the Union, and they were or should have been aware of the construction of their law by these past incidents.

Nor can it be seriously argued that such an interpretation of union law was unreasonable. Nor can the District Court's finding that the Executive Board's elective procedure was somehow "undemocratic" be justified. In fact, the Executive Board as a body is clearly representative of the membership. It consists not only of the

Local officers but of Shop Chairman and segments of the membership at large.

The Secretary and the District Court have disregarded the Secretary's own regulations.

"The interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable."  
(Section 452.3)

The basis of the regulation is found not only in the cases above cited but recognizes the long standing Congressional policy against unnecessary governmental interference with internal union affairs. Hodgson v. Local Union 6799, United Steel Workers of America, AFL-CIO, 403 U.S. 333 (1971).

It is thus evident that the Court below erred in finding that the past practice followed in the interpretation of the Constitution relating to the filling of vacancies was unreasonable.

In any event, even if the Court were correct in determining that the method of installing Archer as interim Business Manager was constitutionally invalid, his de facto incumbency in that office had to have removed

him from the position of Business Agent. The assertion of the Court below that the invalid "appointment" caused Archer to revert to the title of Business Agent, and so become disqualified for running for union office, is a position without precedent and without logic. He assumed all of the responsibilities of that office; his position was acknowledged even by complainant, and thus cannot be deemed not to have held it for "electoral" purposes.

#### CONCLUSION

For all of the reasons set forth herein and in Local 485's prime Brief, the judgment and orders appealed from should be reversed in all respects, and the complaint dismissed.

Respectfully submitted,

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